

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2392 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAGWATIPRASAD @ PAPPU

SWAMISHRAN PANDEY

Versus

STATE OF GUJARAT

Appearance:

Mr.S.V.Raju with Mr.C.V. Prajapati for Petitioner

Mr.S.J.Dave, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/06/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu has brought under challenge the detention order dated 10th February 1997 passed by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act.'

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C. They inter-alia indicate that the detenu has been indulging in unlawful activities of wrongfully confining the persons for the purpose of extorting money and causing hurt to innocent persons and creating atmosphere of fear and two cases, one of 1995 and one of 1996 have been registered, inter-alia, under Sections 342, 384, 323, 294(b) of I.P.Code and one case of 1996 has been registered under the provisions of Arms Act in Sabarmati Police Station, as per the particulars set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statement of six witnesses have been relied upon.

4. The statements of the witnesses speak about incidents dated 14.1.1997, 20.1.1997 and 30.1.1997 which indicate the detenu giving threats to the concerned witnesses and beating them in public and the detenu's conduct resulting in fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention branding the petitioner detenu as "dangerous person" under Sec. 2(c) of the PASA Act.

6. The petitioner has challenged the impugned order of detention and his continued detention on number of grounds, inter-alia, on the ground that the petitioner has not been supplied with complete copy of the Bail Application and the order of Bail passed by the Court in so far as CR No.516/95 of Sabarmati Police Station is concerned. This ground has been taken in Para : 3 of the petition. Para : 3 of the petition would read as under :

"The petitioner submits that the documents on which reliance has been placed by the Detaining Authority have not been supplied to the petitioner. Therefore, the impugned order of detention requires to be quashed and set aside."

In support of the aforesaid ground of challenge the learned Counsel appearing for the petitioner has pointed out that the copy of the bail application in Sabarmati Police Station CR No. 516/96 supplied to the petitioner is incomplete. The copy of the endorsement of the

learned P.P. on the said application has not been supplied. It has also been submitted that it is not clear that such endorsement was before the detaining Authority and, therefore, it has also been submitted that the detaining Authority's subjective satisfaction would stand vitiated for want of placement of complete document before the said Authority. It has been verified from the papers of the Detaining Authority that the copy of the complete document has not been supplied. It also does not clearly appear that the complete document was placed before the detaining Authority.

No Affidavit in Reply has been filed in so far as this ground is concerned.

7. Reliance in this connection has been placed upon a decision of this Court rendered on 1.8.1996 in special Civil Application No.3161 of 1996 (Coram : K.R.Vyas, J.). The said decision refers to the decision of the Honourable Supreme Court in the case of State of U.P. v/s. Kamal Kishore Saini, 1988 (1) SCC 287.

8. The learned A.G.P. has not been able to show anything against the settled law that bail application and the order of bail passed by the Court would be relevant documents and non-supply of complete copies thereof would infringe the provision of Article 22(5) of the Constitution of India.

8. The result is that the continued detention of the petitioner is required to be held illegal. Following order is, therefore, passed :

The impugned order of detention is quashed and set aside and the petitioner - detenu Bhagwatiprasad Pappu Swamisharan Pandey is directed to be set at liberty forthwith if his detention is not required for any other purpose or case. Rule made absolute accordingly.

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